



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

On March 12, 2019, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to an order requiring the Landlord to comply with the Act, Regulation or the tenancy agreement?

Background and Evidence

The Landlord and Tenants both testified that the tenancy began on November 1, 2012 and is currently on a month to month basis. Rent in the amount of \$1,470.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$650.00. A copy of the tenancy agreement was provided by the Tenants.

The Tenants testified that the Landlord replaced the carpeting in the unit above them with laminate flooring with no sound proofing. The Tenants submit that the occupants living in the unit above have three children and there is ongoing noise that is disturbing them. The Tenants testified that the noise from the unit above began on December 2, 2018.

The Tenants testified that they spoke to the woman living above them directly about their noise concerns and the woman asked them to inform her if things got loud. The Tenants submitted that shortly after the woman called the police on the Tenants because she felt threatened by them.

The Tenants testified that they raised their noise concerns to the Landlord on numerous occasions. The Tenants provided copies of complaints that they sent to the Landlord. The Tenants provided digital audio recordings of noise coming from the rental unit located above them.

In response to the Tenant's testimony, the Landlord testified that the rental building is a wood frame multi-unit building with 46 rental units. The Landlord testified that the carpeting in the unit above the Tenants was replaced with laminate style flooring in 2014. The Landlord testified that there is no noise barrier between the floors and because it's a wood frame building there is some noise transfer.

The Landlord testified that the occupants who live above the Tenants moved into the unit on December 1, 2018. The Landlord confirmed that the occupants have three children who are five years old and younger. The Landlord testified that after she received complaints from the Tenants, she spoke to the occupants above about the noise complaints. The Landlord testified that the occupants were asked to minimize running in the unit and dropping of toys.

The Landlord testified that every time a complaint was received she would speak to the occupants living above the Tenants. The Landlord testified that the occupants living above the Tenants made an effort to control any noise coming from the children. The occupants have installed area rugs. The Landlord testified that the occupants asked their daughter to walk like a ballerina.

The Landlord testified that she investigated the complaints by speaking to other neighbouring occupants asking if they have heard any noise and there are no other complaints.

The Landlord submitted that the noise coming from the unit above is reasonable. The Landlord submitted that the Tenants are overly sensitive to noise. The Landlord testified that they have never received a complaint from the Tenants about noise occurring past 11:00 pm.

The Landlord testified that the occupant living above the Tenants has filed for arbitration due to the behaviour of the Tenants.

The Landlord agreed to permit the Tenants to move into another unit on the rental property; however, an agreement was not reached during the hearing.

Analysis

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Tenants' testimony and evidence that they have been disturbed by noise coming from the rental unit located directly above them. I find that the noise is predominantly due to the children playing, running, and dropping items on the floor.

The Tenants and the occupants living above them have the right to ordinary and lawful enjoyment of the premises.

The issue for me to determine is whether or not the Landlord has failed their obligation to protect the Tenants right to quiet enjoyment. Are the noises unreasonable? Is the noise substantial interference with the ordinary and lawful enjoyment of the premises?

I find that the Landlord responded to the reported noise complaints by regularly speaking to the upstairs occupants about the noise complaints she received.

I find that the occupants living directly above the Tenants are alive to the issue of noise and have taken steps to reduce the transfer of noise. The Occupant has placed area rugs and has spoken to the children to try and minimize noise.

I have considered whether or not the noise disturbances coming from the unit located above the Tenants amount to substantial interference with the ordinary and lawful enjoyment of the premises. I take guidance from the policy guideline that a Tenants entitlement to quiet enjoyment does not mean freedom from all noise or disturbance. The Tenants have rented a unit in a multi-unit wood frame building. I find that it is reasonable to expect to hear some noise from other occupants.

I find that the noise disturbances are predominantly due to footsteps and noise from children playing and noise from a fan. It would be unreasonable to expect the young children to tiptoe in the unit; or to not play at all. I find that the noise is not caused to intentionally disturb the Tenants living below. It appears to me that this is not a situation where the occupants living above the Tenants are simply letting their children run amok with no consideration given to the Tenants below. I find that the noise transfer from the unit above is partially attributable to the rental building being a wood frame building.

I find that the Landlord properly responded to the Tenants' concerns and took reasonable steps to address the Tenants' concerns by speaking to the occupants living above.

In the circumstances, after considering the totality of the evidence, I find that noise disturbances caused by the children playing within normal hours is not unreasonable. I find that the Landlord has not breached the Act by failing to take steps to protect the Tenants' right to quiet enjoyment.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were not successful with their application, the Tenants request to recover the filing fee is denied.

Conclusion

The Tenants' application requesting an order for the Landlord to comply with the Act is not successful as I find that the Landlord has not failed to take reasonable steps to protect the Tenants' right to quiet enjoyment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 08, 2019

Residential Tenancy Branch